

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 349**

Citations Affected: IC 27-1-15.6-4; IC 27-7-3.5.

Synopsis: Title insurance. Specifies requirements for the conduct of a title insurance agent or title agency, including licensure, continuing education, placement of title insurance business, record keeping, reporting, and management and use of funds. Requires the department of insurance to establish a title insurance enforcement unit to enforce title insurance law. **(THIS CONFERENCE COMMITTEE REPORT: Removes provisions that would: (1) require a foreign or alien insurance company that provides certain surety bonds to appoint the commissioner of the department of insurance as the company's agent for service of process in certain actions; (2) allow certain members of the political subdivision catastrophic liability fund (fund) to withdraw from membership and receive a rebate of prior assessments; (3) provide for a release from liability for the withdrawing member and the fund; (4) establish a title insurance enforcement fund. Makes technical amendments.)**

Effective: July 1, 2006.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 349 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 27-1-15.6-4 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) As used in this
- 4 section, "insurer" does not include an officer, director, employee,
- 5 subsidiary, or affiliate of an insurer.
- 6 (b) This chapter does not require an insurer to obtain an insurance
- 7 producer license.
- 8 (c) The following are not required to be licensed as an insurance
- 9 producer:
- 10 (1) An officer, director, or employee of an insurer or of an
- 11 insurance producer, if the officer, director, or employee does not
- 12 receive any commission on policies written or sold to insure risks
- 13 that reside, are located, or are to be performed in Indiana, and if:
- 14 (A) the officer, director, or employee's activities are executive,
- 15 administrative, managerial, clerical, or a combination of these,
- 16 and are only indirectly related to the sale, solicitation, or
- 17 negotiation of insurance;
- 18 (B) the officer, director, or employee's function relates to
- 19 underwriting, loss control, inspection, or the processing,
- 20 adjusting, investigating, or settling of a claim on a contract of
- 21 insurance; or
- 22 (C) the officer, director, or employee is acting in the capacity of
- 23 a special agent or agency supervisor assisting insurance

producers and the officer, director, or employee's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

(2) A person who secures and furnishes information for the purpose of:

(A) group life insurance, group property and casualty insurance, group annuities, group or blanket accident and sickness insurance;

(B) enrolling individuals under plans;

(C) issuing certificates under plans or otherwise assisting in administering plans; or

(D) performing administrative services related to mass marketed property and casualty insurance;

where no commission is paid to the person for the service.

(3) A person identified in clauses (A) through (C) who is not in any manner compensated, directly or indirectly, by a company issuing a contract, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the employer's or association's employees, or for the employees of a subsidiary or affiliate of the employer or association, that involves the use of insurance issued by an insurer:

(A) An employer or association.

(B) An officer, director, or employee of an employer or association.

(C) The trustees of an employee trust plan.

(4) An:

(A) employee of an insurer; or

(B) organization employed by insurers;

that is engaged in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers, and that is not individually engaged in the sale, solicitation, or negotiation of insurance.

(5) A person whose activities in Indiana are limited to advertising, without the intent to solicit insurance in Indiana, through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of Indiana, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in Indiana.

(6) A person who is not a resident of Indiana and who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that:

(A) the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate the insurance in the state where the insured maintains its principal place of business; and

(B) the contract of insurance insures risks located in that state.

(7) A salaried full-time employee who counsels or advises the employee's employer about the insurance interests of the employer or of the subsidiaries or business affiliates of the employer,

provided that the employee does not sell or solicit insurance or receive a commission.

(8) An officer, employee, or representative of a rental company (as defined in IC 24-4-9-7) who negotiates or solicits insurance incidental to and in connection with the rental of a motor vehicle.

(9) An individual who:

(A) furnishes only title insurance rate information at the request of a consumer; and

(B) does not discuss the terms or conditions of a title insurance policy.

(10) A licensed attorney when acting as a title insurance producer (as defined in IC 27-7-3.5-16) or a title insurance agent (as defined in IC 27-7-3.5-19).

SECTION 2. IC 27-7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 3.5. Title Insurance

Sec. 1. As used in this chapter, "abstract of title" means a written history, synopsis, or summary of recorded instruments affecting the title to real property.

Sec. 2. As used in this chapter, "affiliated business" means a part of a title insurance agent's business written in Indiana that was referred to the title insurance agent by a producer of title insurance business or an associate of a producer of title insurance business, in circumstances in which the producer or the associate, or both, have a financial interest in the title insurance agent.

Sec. 3. As used in this chapter, "alien title insurer" means a title insurer that is incorporated or organized under the laws of a foreign nation or a foreign province or territory.

Sec. 4. As used in this chapter, "associate" means the following:

(1) A business organized for profit in which a producer of title insurance business is a director, an officer, a partner, an employee, or an owner of a financial interest in the business.

(2) An employee of a producer of title insurance business.

(3) A franchiser or franchisee of a producer of title insurance business.

(4) A spouse, parent, or child of a producer of title insurance business.

(5) A person, other than a natural person, that controls, is controlled by, or is under common control with a producer of title insurance business.

(6) A person with whom a producer of title insurance business or an associate of a producer of title insurance business has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to the producer or associate for the referral of title insurance business.

Sec. 5. As used in this chapter, "bona fide employee" means an individual:

(1) who devotes substantially all of the individual's time to performing services on behalf of a title insurer or title

insurance agent; and

(2) whose compensation for the services described in subdivision (1) is in the form of salary or the equivalent paid by the title insurer or title insurance agent.

Sec. 6. As used in this chapter, "chattels real" means an interest in real estate that is less than a freehold or fee interest.

Sec. 7. As used in this chapter, "closing protection letter" means an indemnification of or undertaking to a party to a real estate transaction by a principal, such as a title insurance company, setting forth in writing the extent to which the principal is responsible for intentional or unintentional misconduct or errors of the principal's agent in closing the real estate transaction.

Sec. 8. As used in this chapter, "commissioner" means the insurance commissioner appointed under IC 27-1-1-2, the commissioner's representative, or the commissioner, director, or superintendent of insurance in another state.

Sec. 9. As used in this chapter, "department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 10. As used in this chapter, "escrow" means written instruments, money, or other items deposited by a party with a depository, an escrow agent, or an escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event.

Sec. 11. As used in this chapter, "financial interest" means a:

(1) direct or indirect; and

(2) legal or beneficial;

interest in an entity, in which the holder of the interest is or will be entitled to at least five percent (5%) of the net profits or net worth of the entity.

Sec. 12. As used in this chapter, "foreign title insurer" means a title insurer that is incorporated or organized under the laws of another state, the District of Columbia, or another jurisdiction of the United States.

Sec. 13. As used in this chapter, "person" means a natural person, a partnership, an association, a cooperative, a corporation, a trust, a limited liability company, or another legal entity.

Sec. 14. As used in this chapter, "premium" means the charge:

(1) specified under a rule adopted by the commissioner;

(2) that is made by a title insurer for a title insurance policy, including the charge for:

(A) performance of primary title services by a title insurer, title insurance agent, or title agency; and

(B) incurring the risks incident to the title insurance policy; under the several classifications of title insurance policies and forms; and

(3) upon which a premium tax is paid.

Sec. 15. As used in this chapter, "primary title services" means the following services:

(1) Evaluation of a title search or an abstract of title to determine the insurability of title.

(2) Clearance of underwriting objections.

(3) Issuance and assumption of responsibility for the issuance of a title insurance policy.

(4) Issuance of closing protection letters.

Sec. 16. (a) As used in this chapter, "producer" means a person, including an officer, director, or owner of five percent (5%) or more of the equity or capital of a person, that is engaged in Indiana in the trade, business, occupation, or profession of:

(1) buying or selling interests in real property;

(2) making loans secured by interests in real property; or

(3) acting as a broker, an agent, or a representative of a person who:

(A) buys or sells an interest in real property; or

(B) lends or borrows money using an interest in real property as security for the loan.

(b) The term does not include an insurance producer or a limited lines producer (both as defined in IC 27-1-15.6-2).

Sec. 17. As used in this chapter, "referral" means the direction or the exercise of a power or influence over the direction of title insurance business, regardless of whether the consent or approval of another person is sought or obtained with respect to the direction or exercise.

Sec. 18. As used in this chapter, "security deposit" means funds or other property received by a title insurance agent as collateral to secure an indemnitor's obligation under an indemnity agreement under which a title insurer:

(1) agrees to provide coverage:

(A) under a title insurance policy; and

(B) that would otherwise be excluded under a specific exception to coverage; and

(2) is granted a perfected security interest in the collateral in exchange for agreeing to provide the coverage described in subdivision (1).

Sec. 19. As used in this chapter, "title insurance agent" means an authorized person, other than a bona fide employee of a title insurer or an attorney licensed to practice law in Indiana, who:

(1) is licensed as a limited lines producer under IC 27-1-15.6; and

(2) on behalf of a title insurer performs the following acts in conjunction with the issuance of a title insurance report or title insurance policy:

(A) Determines insurability and issues a title insurance report or a title insurance policy, or both, based on the performance or review of a title search, an examination of title, or an abstract of title.

(B) Performs one (1) or more of the following functions:

(i) Collection or disbursement of premiums, escrow, security deposits, or other funds.

(ii) Management of escrow, settlement, or closing.

(iii) Solicitation or negotiation of title insurance business.

The term includes a title agency.

Sec. 20. As used in this chapter, "title insurance business" means

any of the following:

(1) Issuing or offering to issue, as a title insurer, a title insurance policy.

(2) Transacting or proposing to transact, as a title insurance agent or title insurer, any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:

(A) Solicitation or negotiation of the issuance of a title insurance policy.

(B) Guaranteeing, warranting, or otherwise insuring the correctness of a title search for instruments affecting the title to:

(i) real property;

(ii) chattels real;

(iii) cooperative units; and

(iv) proprietary leases;

and liens or charges affecting the property described in items (i) through (iv).

(C) Management of escrow, settlement, or closing.

(D) Execution of title insurance policies.

(E) Effectuation of contracts of reinsurance.

(F) Abstraction, searches, or examination of titles.

(G) Issuance of closing protection letters.

(3) Guaranteeing, warranting, or insuring searches or examinations of title to real property or chattels real.

(4) Guaranteeing or warranting the status of title concerning:

(A) ownership of; or

(B) liens on;

real property and chattels real by a person other than a principal to a transaction related to issuance of a title insurance policy.

Sec. 21. As used in this chapter, "title insurance policy" means a contract insuring or indemnifying the owner of, or another person that is lawfully interested in, real or personal property or chattels real, against loss or damage arising from any of the following conditions existing on or before the title insurance policy date and not excepted or excluded:

(1) Defects in or liens or encumbrances on the insured title.

(2) Unmarketability of the insured title.

(3) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the property.

(4) Lack of legal right of access to real property.

(5) Unenforceability of rights in title to real property.

Sec. 22. As used in this chapter, "title insurance report" means a preliminary report, commitment, or binder:

(1) issued before the issuance of a title insurance policy; and

(2) containing the terms, conditions, exceptions, and other matters incorporated by reference under which a title insurer will issue a title insurance policy.

Sec. 23. As used in this chapter, "title insurance subagent" means a person, other than a bona fide employee of a title insurance agent,

1 who on behalf of a title insurance agent determines insurability and
 2 issues a title insurance report or title insurance policy, or both,
 3 based on the performance or review of a title search or abstract of
 4 title. The term does not include a licensed attorney that performs
 5 legal services, including title examination or closing services.

6 Sec. 24. As used in this chapter, "title insurer" means the
 7 following:

8 (1) A company organized under Indiana law to transact title
 9 insurance business.

10 (2) A foreign title insurer or alien title insurer that is licensed
 11 in Indiana to transact title insurance business.

12 Sec. 25. As used in this chapter, "underwrite" means to accept or
 13 reject risk:

14 (1) on behalf of a title insurer; and

15 (2) under authority granted by the title insurer.

16 Sec. 26. (a) The commissioner shall adopt rules under IC 4-22-2
 17 to establish criteria and a process for licensure of the following:

18 (1) A title agency.

19 (2) A title insurance agent.

20 (b) A license may be issued under this section if each person
 21 named on the license possesses all qualifications determined
 22 appropriate by the commissioner.

23 (c) A person shall not act as a title agency or title insurance agent,
 24 and a title insurer may not contract with a person to act as a title
 25 agency or title insurance agent, with respect to risks located in
 26 Indiana unless the person is licensed under this section as a title
 27 agency, title insurance agent, or licensed attorney in Indiana.

28 (d) An individual:

29 (1) employed by or contracted by a title agency, title insurance
 30 agent, or title insurer;

31 (2) to whom the title agency, title insurance agent, or title
 32 insurer delegates authority to act on the title agency's, title
 33 insurance agent's, or title insurer's behalf; and

34 (3) who engages in title insurance business;

35 shall be individually licensed under this section. This subsection
 36 does not require licensure of an individual who performs only
 37 clerical or administrative functions, including quoting title
 38 insurance fees.

39 (e) An applicant for a title agency license or a title insurance
 40 agent license under this section must also satisfy the requirements
 41 of IC 27-1-15.6 that apply to the title agency or title insurance
 42 agent.

43 (f) A title insurer that engages or employs a title agency shall file
 44 with the department, on a form prescribed by the department, an
 45 application certifying that the proposed title agency meets both of
 46 the following requirements:

47 (1) The title agency has obtained a fidelity bond in an amount
 48 that is acceptable to the title insurer, but not less than fifty
 49 thousand dollars (\$50,000).

50 (2) The title agency has obtained an errors and omissions
 51 insurance policy:

- (A) that provides coverage for an opinion of title;
- (B) from an insurer that is acceptable to the title insurer; and
- (C) in an amount acceptable to the title insurer, but not less than two hundred fifty thousand dollars (\$250,000) per claim with an aggregate limit.

The department shall adopt rules under IC 4-22-2 to specify an alternative method of compliance with subdivisions (1) and (2) if a fidelity bond or errors and omissions insurance is generally unavailable.

(g) A title agency shall provide to a title insurer with which the title agency places title insurance business, in a timely manner, information requested by the title insurer to comply with reporting requirements of the department.

(h) To obtain an initial license under this section, a title agency shall comply with the requirements of section 27(a) of this chapter.

Sec. 27. (a) To obtain an initial license under section 26 of this chapter, a title agency shall:

(1) have deposited with the department securities of the type described in IC 27-1-13-3(b) and having at all times a market value of not less than ten thousand dollars (\$10,000); or

(2) post a surety bond of not less than ten thousand dollars (\$10,000) payable to the department;

to secure the title agency's performance of the title agency's duties and responsibilities under the contract described in section 30 of this chapter and entered into between the title agency and each title insurer for which the title agency is appointed. If a surety bond is generally unavailable, the department may adopt rules under IC 4-22-2 to establish alternative methods by which a title agency may comply with this subsection.

(b) The deposit made or bond posted under subsection (a) is for the benefit of a person insured under a title insurance policy and damaged by the title agency's violation of this chapter or of a contractual duty or responsibility described in subsection (a).

(c) A title insurer shall not, directly or indirectly on behalf of a title agency, provide a deposit or bond required under subsection (a).

(d) A title agency may:

(1) exchange or substitute securities:

(A) described in IC 27-1-13-3(b); and

(B) of like quality and value;

for securities on deposit;

(2) receive interest and other income accruing on securities deposited; and

(3) at reasonable times, inspect a deposit of securities made; under subsection (a)(1).

(e) If a properly documented claim is timely filed with the department by a person described in subsection (b), the department may remit to the person in payment of the claim an appropriate amount of:

(1) a deposit made under subsection (a); or

(2) proceeds that are received from the surety.

(f) A deposit or bond described in subsection (a) must remain unimpaired while the title agency continues in business in Indiana and for one (1) year after termination of all title agency appointments held by the title agency. If there are no claims outstanding against the deposit or bond one (1) year after termination of the appointments, the department shall return the deposit or bond and any accrued interest to the title agency.

Sec. 28. (a) A title agency or title insurance agent that is licensed under section 26 of this chapter shall comply with the requirements of IC 27-1-15.7 that apply to the title agency or title insurance agent.

(b) A continuing education course must be approved under IC 27-1-15.7-4.

(c) An individual who teaches an approved course of instruction or lectures at an approved seminar qualifies for the same number of continuing education hours as would be granted to an individual who takes and successfully completes the course or seminar.

(d) The department may grant an individual waiver of the continuing education requirements of IC 27-1-15.7 upon a showing by a licensee that it is not feasible for the licensee to satisfy the requirements before the licensee's license renewal date for an acceptable reason, including the licensee's:

(1) serious physical injury or illness; or

(2) active duty in the armed services for an extended period.

(e) An individual who is subject to this section shall furnish, in a manner satisfactory to the department, certification of the individual's completion of courses, programs, or seminars required by this section.

Sec. 29. (a) In addition to the requirements of sections 26(f) and 27 of this chapter, the commissioner may require a title insurance agent to maintain, for the benefit of a title insurer, an insured, or a depositor, under terms and conditions to be prescribed by the commissioner, in amounts commensurate with the title insurance agent's average exposure and the volume and nature of the title insurance agent's business, a sufficient net worth to ensure the title insurance agent's solvency and commitment to the purpose of being a title insurance agent.

(b) In determining the precise amount and terms and conditions described in subsection (a), the commissioner may adopt rules under IC 4-22-2 that:

(1) specify acceptable alternatives to the net worth requirements described in subsection (a); and

(2) exempt certain persons from complying with all or part of the net worth requirements described in subsection (a) or specified alternatives to the net worth requirements by virtue of:

(A) the person's actual or expected volume of business; or

(B) individual circumstances that show that the requirements would pose an undue hardship on the title insurance agent and the title insurance agent's services will be needed by and desirable to insureds.

(c) The commissioner may adopt rules under IC 4-22-2 to specify information that must be provided to evidence sufficiency of a title insurance agent's net worth as described in subsection (a).

(d) Financial information provided to evidence sufficiency of a title insurance agent's net worth under this section is confidential.

(e) A title insurance agent shall perform, through the title insurance agent's bona fide employees, primary title services to receive compensation for the services the title insurance agent renders.

Sec. 30. (a) A person, firm, association, or corporation that acts as a title insurance agent shall not place title insurance business with a title insurer unless a written contract is in force between the title insurance agent and the title insurer that:

- (1) specifies the responsibilities of each party;
- (2) if both parties share responsibility for a particular function, specifies the division of the responsibilities; and
- (3) contains the following minimum provisions:

(A) The title insurer may terminate the contract upon written notice if one (1) of the following occurs:

(i) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agent's license to do title insurance business, or the commencement of legal proceedings by the state of domicile of the title insurance agent that, if successful, will lead to cancellation of the title insurance agent's license to do title insurance business.

(ii) Material breach of a provision of the contract.

(iii) Notice of cancellation is provided in accordance with contract termination requirements.

(B) Upon notice of termination, the title insurance agent shall immediately discontinue all underwriting on behalf of the title insurer.

This subdivision does not relieve a title insurance agent or title insurer of a contractual obligation not specified in this subdivision.

(b) A title insurance agent shall render accounts detailing all transactions, and remit all funds, due to a title insurer under the contract described in subsection (a) to the title insurer before the later of the following:

(1) Forty-five (45) days after the end of the month of the effective date of the title insurance policy.

(2) Within the time specified by the underwriting contract.

(c) Funds collected by a title insurance agent for the account of a title insurer:

(1) must be held in a fiduciary capacity in a bank that is a qualified financial institution; and

(2) are the property of the title insurer for whom the funds are collected.

(d) A title insurance agent shall keep records concerning funds described in subsection (c) in a manner that permits identification of funds that belong to a particular title insurer.

(e) At a title insurer's request, a title insurance agent or a title insurance agent's successor in interest, transferee, or receiver shall provide access to and the right to copy all escrow files and underwriting files involving a transaction in which a title insurance report or title insurance policy is issued or will be issued by the title insurance agent.

(f) A title insurance agent shall provide to a title insurer access to and a right to copy accounts and records maintained by the title insurance agent with respect to title insurance business placed with the title insurer.

(g) A contract described in subsection (a) may not be assigned in whole or in part by a title insurance agent without the expressed written consent of the title insurer.

(h) It is the duty of a title insurance agent to immediately report and forward to a title insurer all title related escrow claims and title claims reported to the title insurance agent by a policyholder or another person. However, if the contract described in subsection (a) permits the title insurance agent to settle claims on behalf of the title insurer:

(1) the title insurance agent shall send a copy of the claim file to the title insurer at the title insurer's request or as soon as it is known by the title insurance agent that the claim:

(A) has the potential to exceed an amount established by the title insurer;

(B) involves a coverage dispute;

(C) may exceed the title insurance agent's claims settlement authority;

(D) is open for more than six (6) months; or

(E) is closed by payment exceeding an amount established by the title insurer;

(2) files related to title and title related escrow claims settled by the title insurance agent are the property of the title insurer; and

(3) the title insurer may:

(A) suspend a settlement authority granted to the title insurance agent during a pending dispute regarding a cause for termination of the contract described in subsection (a); or

(B) upon:

(i) the title insurer's written notice to the title insurance agent; or

(ii) the termination of the contract described in subsection (a);

immediately terminate a settlement authority granted to the title insurance agent.

This subdivision does not relieve a title insurance agent or title insurer of any other contractual obligation.

(i) If electronic claims files exist in the records of a title insurance agent, the contract described in subsection (a) must address the immediate transmission of the data contained in the electronic claims files.

(j) A title insurance agent shall not:

(1) bind reinsurance or retrocession on behalf of a title insurer;
or

(2) appoint a title insurance subagent, without the expressed written consent of the title insurance underwriter that provides underwriting services under a contract with a title insurer.

(k) The contract described in subsection (a) must include specific terms of a title insurance agent's compensation.

(l) A title insurance agent shall maintain an inventory of title insurance policy forms or title insurance policy numbers assigned to the title insurance agent by a title insurer.

(m) A title insurance agent shall:

(1) annually;

(2) within a time specified by the contract described in subsection (a); or

(3) concurrent with the renewal date of the title insurance agent's contract with a title insurer;

furnish a title insurer with proof that the title insurance agent is in compliance with section 26 of this chapter.

(n) A:

(1) title insurer; or

(2) title insurance agent on behalf of a title insurer;

shall issue a title insurance policy not later than sixty (60) days after all conditions or requirements specified in the title insurance report have been satisfied. However, if a title insurance policy cannot be issued within the period set forth in this subsection due to an act of God or war, the policy must be issued within a reasonable period determined by the department.

Sec. 31. (a) If:

(1) a title insurance agent or title insurer provides settlement services and issues a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of residential real estate securing the loan; and

(2) an owner's title insurance policy has not been requested; the title insurance agent or title insurer shall, at the time the title insurance report is prepared, provide written notice described in subsection (b) to the purchaser-mortgagor or the purchaser-mortgagor's representative.

(b) Notice provided under subsection (a) must explain:

(1) that a lender's title insurance policy will be issued to protect the mortgage lender;

(2) that the lender's title insurance policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased;

(3) what an owner's title insurance policy insures against;

(4) what possible risks exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's title insurance policy; and

(5) that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner for an additional cost.

(c) A title insurer or title insurance agent shall, at the time the title insurance report is prepared, provide written notice to all parties that receive the title insurance report that a closing protection letter may be purchased.

(d) The department shall adopt rules under IC 4-22-2 to specify the content of each notice required under this section.

Sec. 32. (a) A title insurance agent shall maintain sufficient records of the title insurance agent's affairs, including the title insurance agent's escrow operations and escrow trust accounts, to allow the commissioner to adequately ensure that the title insurance agent is in compliance with this chapter.

(b) The commissioner may prescribe:

(1) specific record entries and documents that must be maintained under subsection (a); and

(2) the length of time for which the records and documents must be maintained.

Sec. 33. (a) A title insurance agent, an officer, a director, or an employee of a title insurance agent, or a person associated with a title insurance agent or an officer, a director, or an employee of a title insurance agent, who:

(1) is an independent contractor for bookkeeping or similar purposes; and

(2) knowingly or intentionally converts or misappropriates funds received or held in escrow or in trust by the title insurance agent;

or a person who knowingly or intentionally receives or conspires to receive funds described in subdivision (2) commits an offense described in IC 35-43-9-7.

(b) If a title insurance agent or title agency defalcates, converts, or misappropriates funds held by the title insurance agent or title agency and the title insurance agent or title agency is convicted of an offense under IC 35-43-9-7, the following apply:

(1) The title insurer is liable for the defalcation, conversion, or misappropriation by the title insurance agent or title agency.

(2) If the title insurance agent or title agency is a title insurance agent or title agency for two (2) or more title insurers, the liability must be borne by the title insurer upon which a title insurance report or title insurance policy was issued before the illegal act.

However, a title insurer's liability under this subsection is limited to the amount payable under a title insurance policy issued or committed, or a closing protection letter issued, in connection with the real estate closing or escrow in relation to which the defalcation, conversion, or misappropriation is committed, plus reasonable attorney's fees.

(c) A title insurer shall, at least annually, conduct an on-site review of the underwriting, claims, and escrow practices of a title insurance agent, including a review of the title insurance agent's title insurance policy blank inventory and processing operations. If the title insurance agent does not maintain separate bank or trust accounts for each title insurer that the title insurance agent

represents, the title insurer shall verify that the funds held on the title insurer's behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

Sec. 34. (a) The commissioner shall establish a title insurance enforcement unit to enforce this chapter.

(b) The title insurance enforcement unit shall do the following:

(1) Investigate deceptive acts in connection with title insurance.

(2) Investigate violations of this chapter.

(3) Cooperate with federal, state, and local law enforcement agencies in the investigation of:

(A) deceptive acts in connection with title insurance; and

(B) violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(c) The following may cooperate with the title insurance enforcement unit, including sharing information that is otherwise confidential, to enforce compliance with this chapter:

(1) The professional licensing agency and appropriate licensing boards with respect to a person licensed under IC 25.

(2) The department of financial institutions.

(3) The securities division of the office of the secretary of state.

(4) The supreme court disciplinary commission, with respect to attorney misconduct.

(5) The housing and community development authority.

(6) The department of state revenue.

(7) The state police department.

(8) A prosecuting attorney.

(9) Local law enforcement agencies.

(10) The Indiana real estate commission.

(d) The commissioner may file a complaint with an entity specified in subsection (c) to enforce this chapter.

(e) This section does not limit the jurisdiction of an entity described in subsection (c).

Sec. 35. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 36. (a) If the commissioner, after notice and hearing under IC 4-21.5, determines that a person has violated this chapter, the commissioner may:

(1) impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation; and

(2) if the person is a title insurance agent, order revocation or suspension of the title insurance agent's license.

(b) If an order of rehabilitation or liquidation of a title insurer has been entered under IC 27-9, and:

(1) the receiver appointed under the order determines that a title insurance agent or another person has violated this chapter; and

(2) the title insurer has suffered a resulting loss or damage; the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and the title insurer's policyholders and creditors.

(c) This section does not:

- 1 **(1) affect the right of the commissioner to impose another**
- 2 **penalty under this title; or**
- 3 **(2) limit or restrict the rights of policyholders, claimants, or**
- 4 **creditors.**

5 **Sec. 37. The commissioner or attorney general may bring an**
6 **action in a court with jurisdiction to enjoin violations of the federal**
7 **Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).**

(Reference is to ESB 349 as reprinted March 1, 2006.)

Conference Committee Report
on
Engrossed Senate Bill 349

Signed by:

Senator Waltz
Chairperson

Representative Burton

Senator Mrvan

Representative Mahern

Senate Conferees

House Conferees